IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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1. D.B. CIVIL SPECIAL APPEAL NO.352/2005 &
2. D.B.CIVIL MISC. APPLICATION NO.33/2006
   (State and ors. V/s Manoj Ali and anr.)

3. D.B. CIVIL SPECIAL APPEAL NO.353/2005
4. (The Commissioner Excise and anr. V/s Manoj Ali and Anr.)

5. D.B. CIVIL SPECIAL APPEAL NO.354/2005 &
   D.B. CIVIL MISC. APPLICATION NO.43/2006
   (State and ors. V/s Manoj Ali and anr)

6. D.B. CIVIL SPECIAL APPEAL NO.355/2005 &
7. D.B. CIVIL MISC. APPLICATION NO.42/2006
   (The Commissioner Excise and anr. V/s Manoj Ali and anr.)

Date of Order : 6th July, 2006

PRESENT
HON'BLE MR.RAJESH BALIA, J.
HON'BLE MR. R.P. VYAS, J.

Mr.M.R. Singhvi, for the appellants.
Mr.Rajendra Mehta, for the respondent - Contractor

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These four appeals are against the common judgment of the learned Single Judge dtd.29.7.2005 passed in four S.B. Civil Writ Peittions No.3993, 3994, 4038 and 4044/2005 particulars of which we shall refer to a little later.

The controversy in these matters is about cancellation of wholesale licence of IMFL/bear and country liquor licence issued in favour of the respondent Manoj Ali and party (hereinafter referred to as the Contractor) for finance year 2005-2006.

PARTICULARS ABOUT PETITIONS AND SPECIAL APPEAL RELATING TO CANCELLATION OF WHOLESALE IMFL/BEAR LICENCE

Vide order passed by the Commissioner of Excise Rajasthan dated 30.5.2005 by finding that since from the approved godown under the wholesale licence to vend IMFL and beer, a large quantity of IMFL was recovered in respect of which a case under Section 19/54 read with Section 58(c) of the Excise Act, 1950 has been registered as FIR No.8/2005 and that storage of IMFL and beer in the godown in question was unauthorized and in breach of conditions of licence. The licence issued on 27.4.2005 and provisional sanction issued on 1.4.2005 for wholesale trade in IMFL and beer was cancelled and as a consequence the licence fee was forfeited. The Dist. Excise Officer, Bikaner was directed to take in his possession the stock lying in the

approved godown for wholesale trade and dispose off it in accordance with law.

The said order dtd.30.5.2005 canceling IMFL licence and sanction issued in favour of the Contractor and forfeiting the amount of licence fee was set aside by the Board of Revenue vide its orderdtd.6.7.2005 and the matter was remanded back to the Commissioner of Excise, Rajasthan for deciding the case a fresh.

Both the Excise Department as well as contractor were not happy with the order of remand. While the department wanted that the Board ought to have sustained the order of the Commissioner dated 30.5.2005, the Contractor demanded that the order of the Commissioner has rightly been set aside, but there was no case for remanding it back to the Commissioner.

This led to filing of two cross writ petitions by the Excise Department as well as by the Contractor.

The Contractor has preferred S.B. Civil Writ Petition No.4038/2004 challenging the order of Board of Revenue and the order of Excise Commissioner relating to

cancellation of wholesale licence of IMFL and beer. D.B. Civil Special Appeal No.352/2006 arises out of judgment referable to writ petition No.4038/2005.

Correspondingly the Commissioner, Excise and the Dist. Excise Officer preferred S.B. Civil Writ Petition No.3993/2005 challenging the order of Board of Revenue dated 6.7.2005 related to cancellation of contractor's licence for wholesale trade in IMFL and beer. D.B. Civil Writ Petition No.355/2005 arises out of aforesaid writ petition No.3993/2005.

PARTICULARS ABOUT PETITIONS AND SPECIAL APPEALS RELATING TO CANCELLATION OF COUNTRY LIQUOR LICENCE

As a result of cancellation of licence for wholesale vend of IMFL and beer granted to the respondent - Contractor and also for the reason of registration of case under Section 19/54 read with Section 58(c) of the Rajasthan Excise act, the licence for retail vend of country liquor issued in favour of the respondent – contractor was also cancelled by the Commissioner vide his order dtd.28th June, 2005 as per Section 34(2) of the Act.

In this order reference was made to condition No.9.2 of the country liquor which provides that if the licensee is found guilty of evading excise duty payable to the State directly or indirectly, his licence can be cancelled or suspended. It also referred to condition no.9.3 which corresponded to clause 17 of wholesale licence for IMFL/bear, that apart from empowering Commissioner to cancel or suspend licence in terms of Section 34(1)(d) on being convicted of any offence stated therein, the Commissioner could also cancel or suspend the licence on mere registration of a case under said provisions. However, in these appeals, principal reliance was placed on Section 34(2) of the Act of 1950 which enables cancelling authority to cancel other licence if one of the licence issued under the Act is cancelled for any reason. It has also been the reason for cancelling the country liquor licence that contractor's licence for wholesale vend of IMFL/bear was cancelled on 30.5.2005.

The order dtd.28.6.2005 was also set aside along with the order dtd.30.5.2005 by the Board by common order dtd.16.7.2005 and the Board remanded the case back to the Commissioner for deciding the case of cancellation of country licence also afresh.

Aggrieved with the aforesaid order relating to cancellation of country liquor licence, the contractor preferred S.B. Civil Writ Petition No.4044/2005 and the Excise Commissioner and the Dist. Excise Officer preferred S.B. Civil Writ Petition No.3994/2005 respectively. The special appeal No.353/2005 arises out of the decision rendered in writ petition No.3994/2005 and special appeal No.354/2005 arises out of S.B. Civil writ petition No.4044/2005. In the writ petitions filed by the Commissioner, Excise, State has not been arrayed as party, though State was impleaded as party in the to petitions filed by the Contractor.

Before the learned Single Judge both the learned counsel submitted that none of them wanted the matter to be remanded and the matter is required to be decided one way or other on the basis of material on record.

With this request in mind, the learned Single Judge decided all the four writ petitions by common order. The writ petition filed by the Commissioner, Central Excise and the Dist. Excise Officer, Bikaner were dismissed by sustaining the preliminary objection raised by the

Contractor that in view of the decision rendered by the Hon'ble Supreme Court in the case of Chief Conservator of Forests, Govt. of A.P. V/s Collector and ors. reported in 2003(3) SCC 472, the writ petition is not maintainable as the lis arising out of the contract entered between the State and the respondent – Contractor could be pursued only by or against the State Government and Officers of the State Government could not maintain the writ petition of their own.

The other writ petitions filed by the Contractor was allowed and the order of remand by the Board as well as of the Commissioner cancelling licences were set aside.

Aggrieved with the aforesaid judgment of the learned Single Judge dtd.29.7.2005, the aforesaid appeals are preferred by State as one of the appellants in all appeals along with Commissioner Excise and District Excise Officer before the learned Single Judge who were petitioners in the writ petitions filed by the Department.

In the first instance, the Division Bench of this Court vide it judgment dtd.17.1.2006 was of the view that the Board of Revenue has correctly exercised its discretion in

remanding the case for enquiry and fresh decision. The order of the Board of Revenue should have been upheld in its entirety and the writ petition preferred by the Contractor as well as the Department should have been dismissed. With this conclusion, the appeals were disposed of with following orders:

> "In the result the order of the learned Single Judge is modified to the extent that quashing of the orders of Excise Commissioner dated 30.5.2005 and 28.6.2005 would stand but subject to enquiry followed by a fresh order to be passed by the Excise Commissioner in accordane with law as directed by the Board of Revenue by its order dated 6.7.2005. The writ petitions preferred by the Department as well as the Contractor would stand dismissed.
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> The appeals are dismissed in the above terms.
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> Before we part, it may be clarified that any observation made in this order should not be understood as concluded opinion of this Court. The observations were meant only for disposal of these appeals. The Excise Commissioner will be at liberty to arrive at his own conclusion."

The matter was taken before the Hon'ble Supreme Court both by the contractor as well as by the State Government. After grant of special leave, the Hon'ble Supreme Court made following order:

> "Leave granted in both the matters.
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> Having heard the learned counsel for the petitioner and Mr. Sorabjee, learned senior counsel appearing on behalf of the State, we are of the opinion that the Division Bench of the High Court was not correct in remitting the matter to the Board of Revenue as both the petitioner as also the Commissioner of Excise approached the High Court aggrieved by the orders passed by the Board of Revenue, remanding the matter back to the Commissioner. The impugned order passed by the High Court is therefore set aside. We would, however, request the Division Bench of the High Court to consider the matter afresh on merits as expeditiously as possible, preferably within three months from the date of communication of this order.
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> The appeals are disposed of with the aforementioned direction."

This is the course through which these appeals are before us for decision.

Before we embark on the detailed facts and merits of the case, we may notice that in all the four appeals, the Contractor has moved a separate misc. application. The misc. applications are primarily for claiming consequential reliefs as a result of setting aside the order of Commissioner dtd.30.5.2005 cancelling the wholesale

licence to vend IMFL and beer and the order dtd.28.6.2005 cancelling the licence for retail vend of country liquor by seeking refund of security deposit and licence fee forfeited by the order of Commissioner with interest and also laid claim to the estimated loss of profit which according to the Contractor, he would have earned had his licence been not cancelled. However, realizing that claim to loss of profit falls in the realm of damages for breach of contract and is not subject matter of writ petitions and requires probe into questions of facts about the party who is liable for breach of contract, the extent of responsibility of State in such matters relating to action of its officers which are ultimately found to be erroneous and as to the actual loss of profit that have been caused, the counsel for the contractor candidly stated that the misc. applications be confined to the grant of consequential benefits of refund of forfeited amount with interest payable thereon in accordance with law. In respect to the claim of loss of profit, the contractor be set at liberty to pursue his remedy under the ordinary law as may be available to him. To this prayer, the learned counsel for the appellants has no objection to the extent it related to direct consequence of ultimate result of appeals, as restoration of licence and permission to trade in potable liquor is not possible as

the permit of licence has expired during pendency of these proceedings.

It may also be noticed here that during pendency of this litigation, the period of contract both for wholesale vend of IMFL and beer and retail vend of country liquor have expired and therefore, question of allowing the contractor to carry on trade as a result of setting aside of order of cancellation in both the cases will not arise. To that extent, the relief has also become infructuous so far as the present appeals are concerned.

Since we propose to dispose of all the appeals by common order, the facts are common, though marking of annexure in different writ petitions are different, we refer to chronology of facts as are relevant for the present purposes. Since we are to determine the issue raised in these appeals on merits by taking into consideration entire facts and material, chronology of events is on the basis of material placed on record and the original records that have been placed before us by the appellant during the course of hearing so far as considered necessary and relevant for appreciating material on record as well as

certain submissions made by the learned counsel during the course of hearing.

Brief facts:

A. The contract for IMFL and beer wholesale vend and retail country liquor for the Bikaner Group of Shops for the year 2005-2006 was to commence w.e.f. 1.4.2005.

B. On 12.2.2005 the Excise Section of Finance Department of State of Rajasthan issued temperance policy for the year 2005-2006. Apart from details of general policy matters to be followed, the two aspects of the policy relevant for the present purpose may be noticed. Firstly in order to regulate the quality of IMFL and beer vended in the State, it was proposed that on IMFL and beer to be vended in the State of Rajasthan, the hologram/ slip containing batch number be fixed on the IMFL and beer containers. Secondly, it was also envisaged that only such IMFL and beer be permitted to be vended in the State which is manufactured out of extra neutral alcohol (ENA) and the IMFL manufactured from

rectified spirit need not be permitted to be sold within the State of Rajasthan.

C. Manoj Ali and party, the respondent was granted licence for retial trade in country liquor for the year 2005-2006 for Bikaner district group, on the basis of his highest tender and on that basis, he was also sanctioned licence for wholesale trade of IMFL and beer for Bikaner district group for the year 2005-2006 vide order dt.30.3.2005 in pursuance of an application made on 29.3.2005.

D. With the sanction letter dtd.30.3.2005, the Contractor was required to submit a map in four copies of wholesale godown from where the contractor intends to trade and the locality where he wants to store the IMFL and beer on 30.3.2005 itself.

E. The contractor submitted blue print of premises which he intended to use as godown. The premises were owned by one Sh. Daljeet Singh and Gurmeet Singh and consisted of five rooms/halls of different sizes annexed herewith as Schedule -A.

F. The map as it appears from the record was exact replica of the original map submitted for approval as wholesale godown of IMFL/bear and as such approved by the Dist. Excise Officer in the case of previous contractor M/s Ram Pal Rajkishan and Party situated at Tulsi Circle. The map of approved premises for wholesale godown of IMFL/bear for financial year 2004-2005 in favour of Rampal Rajkishan is annexed as Schedule-B.

G. This map shows that on the west of constructed premises was one room followed with open space abutting on the public way. The room was shown to be having an opening towards public way on the open space. On the eastern side, there was Deshi wine godown and was abutting Vishnoi Dharmshala. While at the close of western side, there was only one hall attached to IMFL wholesale godown of four rooms**.**

H. On first of April, under the letter of sanction, the contractor commenced his business, before the licence in the prescribed proforma was issued or the proposed premise for wholesale storage of IMFL

and beer was approved. In fact the first supply commenced only on 4th April.

I. While the matter was pending for issuance of licence and approval of the premises proposed as wholesale godown for IMFL/bear on 11.4.2005, it is stated that on receiving a complaint, the Dy. Superintendent of Police surveyed the aforesaid premises. The inspection was said to have commenced on 11.4.2005 at 12.30 p.m. after requiring the Excise Inspector, Bikaner Circle Sh. Hajja Raj to be present. As a consequence of aforesaid inspection or survey, a search report was prepared on 12.4.2005 at 11 p.m. i.e. to say almost 35 hours from the time of commencement of inspection.

J. As per that inspection report, the compound wall gate was closed from inside. Seeing the persons in uniform, somebody who was present inside the premises ran away by jumping the wall towards Vishnoi Dharmshala. On entering into the gate, it was found that wholesale godown was open. No body was inside. No independent witness was found and therefore, Sh. Prithvi Pal Singh, Sub Inspector and

Hajja Ram, Excise Inspector, Bikaner Circle were nominated as motbirs. In the front room of the godown, IMFL and beer were found for which separate list was prepared. Then the party went to the room situated at the back of the godown which was closed with shutter. Since the said room according to Hajja Ram was part of approved wholesale godown, he suggested that its search is also essential and one man has already run away, suspicion about illicit liquor is strong. It was not possible to procure key of the lock, therefore, locks were broken open and it was found that the room is filled with IMFL and it was also found that it did not contain hologram of the Excise Department nor did it contain MRP which according to new excise policy were essential. Therefore, it was considered to be unauthorized liquor. Since godown is in the name of Manoj Ali, therefore, primarily case against Sh. Manoj Ali is made out for offence under Section 16/54 of the Excise Act. With this premises unauthorized liquor was seized. In all 11204 nips, 1634 pints and 6820 bottles of IMFL and 370 bottles of beer were found in the said room. The seizure memo was prepared and prosecution report was filed

under Section 16/54 of the Excise Act giving rise to FIR No.8. The offence was later on corrected as under Section 19/54 of the Excise Act.

K. Though the Inspection's report states that a "Fard" of IMFL/bear found in open part of godown was prepared and the same was found to be in order, but no such fard of properly stocked IMFL/bear is to be found with original report submitted along with complaint No.8 dtd.13.4.2005 nor the same is to be found in any of the record produced before us.

L. That no verification was made with stock register was also not found during the search as found by the Commissioner in his order dtd.30.5.2005.

M. It is pertinent here to notice that on 11.4.2005 itself, proposal to approve blue print submitted by the Contractor for the year 2005-2006 was sent for approval to the head office as per the Excise Department i.e. to say on the same date on which search was alleged to have started at 12.30 p.m. The FIR No.8 against the contractor was registered on 13.4.2005.

N. On 13.4.2005, the Contractor made an application before the Commissioner, Rajasthan Excise. After mentioning about the sanction of licence for wholesale trade in IMFL and beer, the contractor submitted that the aforesaid premises, site plant of which was submitted for approval, were in possession of previous licensee for the year 2004-2005, who was the licensee until midnight of 31.3.2005. He had not delivered him possession of the room from which the IMFL/bear in question was recovered, under the lock and key of the previous contractor. Since he is out of State, he has not been able to contact him. However, the Excise Department had knowledge about the IMFL stock stored by the previous contractor in the disputed premises that has been recovered by effecting search of the said premises. The goods recovered from the said premises do not belong to him.

O. After the case was registered on the basis of aforesaid search on 13.4.2005 and report dtd. 17.4.2005 about the same was sent to the Commissioner of Excise, on 27.4.2005, the

Commissioner issued licence for IMFL wholesale trade in favour of the respondent – contractor and also approved the blue print of IMFL godown submitted by the respondent – contractor which was acknowledge by the contractor with a rider that he accepts approval after excluding the disputed room in the map.

P. Simultaneously with the issue of licence and approval of the entire premises as aforesaid on 27.4.2005, the contractor was asked to show cause against the proposed cancellation of the licence of IMFL/bear. The reason given for proposed action was stated to be that on 11.4.2005, the Dy. Superintendent (Excise), Prevention Squad from the wholesale godown of IMFL at Tulsi Circle recovered IMFL and beer **which did not have hologram of the Excise Department and MRP was also not printed thereon which was essential according to new Excise Policy**. Therefore, IMFL and beer recovered from the aforesaid premises falls within the purview of illicit liquor, therefore, the case against the contractor under Section 16/64 has been registered.

No other ground was stated for the proposed cancellation of licence.

Q. This was replied to by the Contractor on 30.4.2005 reiterating that until 11.4.2005 the premises from which the IMFL/bear without hologram and MRP was recovered was in the continued possession of previous contractor M/s Rampal Rajkishan and party and one Naresh Kumar Arora as chowkidar of the previous contractor was left behind to take care of that room. The present contractor had no connection directly or indirectly with the aforesaid liquor. He also pointed out that seized IMFL/ bear stock being of the previous contractor, ought to have been taken possession of by the Department on 31.3.2005. Along with this reply, affidavit of Naresh Kumar dtd.21.4.2005 stated to be the employee of the previous contractor was submitted supporting the case of the contractor.

R. Thereafter on 13.5.2005, another notice was issued again referring to that seized bottles of IMFL/bear were not containing hologram and MRP as per excise policy of 2005-2006 which shows that the seized

liquor has been illegally stored by the contractor in the approved premises. In this letter, it was also stated that the case under Section 19/54 of the Excise Act has been registered on 13.4.2005 (instead of 16/54 as stated in earlier notice). It was also stated that the aforesaid act amounts to violation of terms of licence and because case has been registered against the contractor, it is also found to be in breach of condition No.17. Attention was invited to clause 9.2 and 9.3 of the licence relating to retail vend of country liquor. This letter also says that the contractor has violated clause 9.2 and 9.3 of the licence for country liquor also and since wholesale licence for IMFL and beer was issued on the premise because the contractor was holding the licence for country liquor retail vend, the wholesale licence for IMFL and beer is required to be cancelled. The cause was required to be shown against the proposed cancellation of wholesale licence for IMFL and beer. This notice also did not contain any intimation that country liquor licence is required to be cancelled.

S. The contractor replied vide his submission dated 28.5.2005. The contractor pointed out the discrepancy in the notice dtd.13.5.2005 and 27.5.2005. He pointed out the variance in the provisions under which case against him was registered on 13.4.2005. While in the notice dtd.27.4.2005, it was stated that the case has been registered under Section 16/54 of the Excise Act, in the notice dtd.13.5.2005, the provision under which the case has been registered is stated to be 19/54 of the Excise Act. He reiterated that when the Dy. Superintendent (Excise) had inspected the premises on 11.4.2005, one room which had separate outlet and was in possession of the previous licensee was not in his possession. It was also pointed out that and it was stated in seizure report that in the premises which were in possession of the contractor duly authorized stock was lying and no further search and survey of the premises which were in possession of the contractor was conducted. He has only seized the goods from the room which was not in his possession by breaking open the lock. Had it not been so, the entire godown would have been seized. It was also pointed out clearly in this letter

that in the complaint lodged for prosecuting the contractor, no batch number of any of the seized IMFL/bear has been shown and if the enquiry is made about batch numbers, it would be clear that the seized stock of liquor bottles belonged to previous licensee which was stored by the previous licensee in his approved retail godown for IMFL at Tulsi Circle. The contractor also pointed out that under the new policy, IMFL manufactured out of rectified spirit was required to be destroyed and it could not be transferred to subsequent licensee. It was also pointed out by the Contractor that amongst seized goods, majority of the stock consisted of red scotch whisky, rum and gin, which are manufactured from rectified spirit and could not have been transferred to anyone but were liable to be destroyed by the Department in terms of the new Policy, but the same were not destroyed and by collusion with the Excise Inspector, the previous licensee without delivering possession of said liquor and without destroying the same has left the place. It is said balance stock of the previous licensee which was recovered by the search party on 11.4.2005. In support of his aforesaid contention, he also referred

to details about permit, invoice no. etc. from which it could be verified that goods seized during the search were shifted by the previous licensee from his wholesale godown on 24.3.2005 to retail godown at Tulsi Circle, entry about which is to be found in the wholesale register and goods have been recovered from the same place where it was transferred. According to the submission made by the Contractor, the aforesaid investigation would fortify the contractor that the goods stored in the retail godown of previous licensee which was not inspected before the close of period of previous licensee and the disputed IMFL remained in the said godown. Since the previous licensee was required to pay excise duty on the balance of retail stock transferred from wholesale godown, he has left the place and the Department has also not acted by seizing the same before the expiry of permit of previous licensee. It was also replied that maps were submitted by the contractor before 31.3.2005 on 30.3.2005 when he has not actually acquired the possession of the premises in question as the existing licence in respect of that had not expired till then. The maps were submitted on the assurance given by the

previous contractor in whose possession the premises were that he would deliver the vacant possession of entire premises, but in fact, on 1st of April, possession of one room, which had separate door, was not delivered to the contractor. He further submitted that despite information having already been given to the Excise Department, the map submitted by the contractor was approved on 27.4.2005 which was served on the contractor only on 25.5.2005. With this defence, it was requested that notice be discharged.

T. Thereafter the Commissioner passed the impugned order dtd.30.5.2005 that since the premises where from IMFL without hologram and MRP level was recovered is part of the approved godown for wholesale vend of IMFL and beer, **which has not been entered in the stock register**, therefore, the contractor alone is responsible for storage of said articles in the sanctioned godown and that since on the aforesaid premise, a case under Section 19/54 read with Section 58(c) has been registered against the contractor. Since the contractor has committed breach of conditions No.17 and 19 of the wholesale

licence for IMFL and beer and since it is proved beyond doubt that on 11.4.2005 from the approved godown of the licensee large quantity of IMFL and beer has been recovered without hologram and MRP on the basis of which a case under Section 19/54 read with Section 58(c) has been registered as case No.8/2005, the licence issued on 27.4.2005 by the Dist. Excise Officer and provisional sanction issued on 1.4.2005 is cancelled. As a consequence, the licence fee deposited by the contractor amounting to Rs.6,00,000/- was also forfeited.

U. It was for the first time while making the aforesaid order on 30.5.2005, the counsel for the contractor was apprised that as a result of cancellation of licence for wholesale IMFL and beer, licence of country liquor is also liable to be cancelled in terms of Section 34(2) of the Rajasthan Excise Act, 1950 and he was required to make his submission then, the counsel wanted time to make submissions.

V. Thereafter having received the submissions dtd. 8.8.2005 against he proposed cancellation of country

liquor licence, country liquor licence was also cancelled vide order dtd.28.6.2005.

W. Before decision on country liquor licence, the contractor had preferred a writ petition before this Court in which liberty was given to the petitioner for approaching the Commissioner to avail alternative remedy of compounding the case. Therefore, without prejudice to the reply submitted on 8.6.2005, the contractor offered to compound the case with a request to accept the minimum amount under Section 70 of the Excise Act. Considering it to be a conditional offer.

X. The prayer for composition was rejected vide order dtd.28.6.2005. The following order was passed:

> "Now we have to consider the provision of the Section 34(2) and 58C of the Rajasthan Excise Act of 1950 which provide for cancellation of another licence of the licensee, if one licensee is cancelled under the act. It is a fact that M/s Manoj Ali Hakim Ali had two licenses under Rajasthan Excise Act, one for sale of IMFL and beer in wholesale and other for sale of Country Liquor as contractor of Country Liquor of Bikaner district. A licensee is required to abide by all the provisions of Rajasthan Excise Act of 1950 and rues made thereunder and terms and conditions of the

Country Liquor contract as mentioned in tender document. As a wholesale licensee, he was found guilty of keeping large quantity of stock of IMFL and beer in an unauthorised manner in his licensed godown, with intention to evade payment of Excise duty payable on such unauthorized stock. It is a case in which Excise Duty to a tune of Rs.1140906/- has been evaded. This action of licensee strikes at the very roots of the State Revenue. For this his wholesale trade licence has already been cancelled on 03.05.2005.

As a Country Liquor contractor, provisions of the clause 9.2 and 9.3 of the tender documents are applicable on him. Clause 9.2 clearly provides that if a Country Liquor Licensee is found guilty of evading Excise Duty payable to State Government, directly or indirectly, his license can be cancelled. Similarly clause 9.3 clearly stipulates that if a case under Rajasthan Excise Act of 1950 and NDPS Act, 1985 is registered against the licensee, his licence is liable to be cancelled. In the instant case, he was not only found guilty of evading Excise duty in his capacity as wholesale licence of IMFL and Beer,a case has also been registered against him under Section 19/54 of the Rajasthan Excise Act, 1950. It is a glaring violation of the licensing condition of the Country Liquor Contract. Thus, he has committed an offence under Section 58C of the Rajasthan Excise Act. In such circumstances, as per terms and conditions of the grant of licence for EPA contract for sale of country Liquor and under the provisions of 34(2) of the Rajasthan Excise Act of 1950, I have no other alternative except to cancel the license granted to said M/s Manoj Ali Hakim Ali of Jaisalmer for Bikaner group under Rule 67 KK of Rajasthan Excise Rule of 1956 for exclusive privilege of Country liquor sale in Bikaner district. In view of the aforesaid discussion, license granted to the said licensee for sale of Country Liquor in Bikaner district of EPA basis is cancelled with immediate effect. In terms of the clause 9.7 of the terms and

conditions applicable to EPA contracts as mentinoed in the tender document for 2005-2006, Cash Security of Rs.1,85,28,000/- (Rs. One Crore eighty five lakhs twenty eight thousands only) and Bank Gurantee of Rs.1,85,27,800/- furnished by main branch of Union Bank of India, Udaipur also stand forfeited. Manager, Union Bank of India, Main Branch, Udaipur is directed to remit the amount of Bank Guarantee to the office forthwith. M/s Manoj Ali Hakim Ali shall also be responsible for any other loss which may occur to the State Government on account of the cancellation of this contract as per the terms and condition laid down in tender document.

District Excise Officer, Bikaner is hereby directed to take over possession of entire Contractor's stock of Country Liquor lying in his licensed shops and godowns. General Manager, Ganganagar Sugar Mills Ltd., Jaipur shall make alternative arrangement for sale of Couuntry Liquor in Bikaner district till fresh Country Liquor Contract is awarded by the Department. Pronounced on 28th Day of June, 2005."

Y. As noticed above, On appeal against the orders cancelling licence for wholesale vend of IMFL and beer and country liquor licence, the Board of Revenue set aside the order of the Commissioner and remanded the case back to the Commissioner for deciding both the cases a fresh in accordance with law. The Board of Revenue was of the opinion that maps of proposed site of wholesale godown submitted on 30.3.2005 was only a proposal in

expectation that the said premises will be let out to the Contractor by its owner Sh. Daljeet Singh and Gurmeet Singh. In some premises previous licensee had remained in possession who have transacted his business in the previous financial year, therefore, during the intermediary period, the godown was only temporary. Therefore, possibility that previous licensee may not have vacated part of the premises and it may have remained under his lock and possession cannot be ruled out. The fact that within 10 days of the commencement of new licence, excise squad has raided the disputed premises by breaking open the lock from which disputed stock of IMFL and bear was found and no illicit liquor was found in the godown connected with the licensee's business and the fact that despite about this aspect of the matter,the licensee has informed the Excise Department on 13.4.2005, still on 27.4.2005, the licence was issued and map of the proposed godown in the original was sanctioned, go to show that the defence of the contractor has not really been examined and investigated by holding proper enquiry, the extreme step of cancelling the licence cannot be sustained. Consequently, since the order

cancelling licence for wholesale vend of IMFL and beer is not sustained in absence of proper enquiry, cancellation of licence for country liquor vide order td.28.6.2005 is also not sustainable. In absence of proper enquiry, it cannot be said that the allegations levelled against the contractor were duly proved nor he can be convicted unless he is found to be guilty beyond reasonable doubt. Therefore, the impugned orders were not found to be sustainable. However, keeping in view the observations made in the order, the Commissioner was required to pass a fresh order.

Z. After this order was passed on 6.7.2005, on 13.7.2005, two affidavits were received by the Excise Commissioner which were deposed by Ram Pal and Rajkishan M/s Ram Pal Rajkishan. The two deponents explaining their long absence admitted that seized stock was part of balance stock under their licences for 2004-2005 and the possession of the room in dispute was not delivered to respondent licensee for 2005-2006.

ZA. After all this happened on 14.7.2005, the Dist. Excise Officer, Bikaner, for the first time, responded to letter from the Addl. Excise Commissioner dtd. 13.5.2005 that on 28.5.2005, the wholesale godown of IMFL and beer was inspected by the Excise Inspector and he found stock to be nil. It was also stated that apart from the fact that stock in the wholesale godown of previous contractor was found to be nil, the Additional Inspector has also inspected the retail godown where also the stock was found to be nil. It was emphasized that from the record, it is apparent that before 30.3.2005, stock under the wholesale licence of the previous contractor has become nil. The letter dtd.14.7.2005 reads as under:

" राजस्थान सरकार

कार्यालय जिला आबकारी अधिकारी, बीकानेर

क्रमांक : आब./अभि./05-06/ 404

दिनांक 14.7.2005

सेवा में,

श्रीमान् अतिरिक्त आयुक्त महोदय,

आबकारी विभाग, बीकानेर

विषय :- प्रथम सूचना रिपोर्ट 8/ 05 के सम्बन्ध में।

प्रसंग :- श्रीमान् का पत्रांक आब./अभि./ 05-06/ 170 दि. 13.5.05

महोदय,

विषयान्तर्गत प्रासंगिक पत्र के सन्दर्भ में निवेदन हैं कि नियमानुसार थोक गोदाम का प्रभारी सम्बंधित क्षेत्र का आबकारी निरीक्षक होता हैं, उसी के देखरेख में थोक में माल का आना व निर्गम होता हैं। पिछले वर्ष यानि वर्ष 2004-05 का थोक गोदाम, आदि के स्टॉक की रिपोर्ट संबधित आबकारी निरीक्षक बीकानेर शहर ने अपनी रिपोर्ट दिनांक 28.3.2005 से थोक गोदाम में मदिरा व बीयर का स्टॉक शून्य बताया हैं। इसके अतिरिक्त निरीक्षक ने मदिरा खुदरा गोदाम का स्टोक में शून्य बताया हैं (प्रतिलिपियां संलग्न हैं।) अभिलेखों को देखने से यह स्पष्ट होता हैं कि दिनांक 31.3.05 से पूर्व ही थोक में मदिरा का स्टोम शून्य हो गया था, इसके अतिरिक्त थोक में संधारित थोक रजिस्टरों के अवलोकन से भी स्पष्ट होता हैं कि थोक गोदाम में मदिरा व बीयर का स्टोक शेष नहीं रहा था।

जहां तक प्रासंगिक पत्र में उल्लेखित पूर्व अनुज्ञाधारी के चौकीदार श्री नरेश कुमार पुत्र श्री किशोरीलाल का प्रश्न हैं संबधित अनुज्ञाधारी के नौकरों के नौकरनामे भी दिनांक 31.3.05 तक विभाग द्वारा स्वीकार किये जाते हैं। इस तिथि के पश्चात् नौकरनामा स्वत: ही समाप्त हो जाता हैं।

रिपोर्ट श्रीमान् जी की सेवा में सादर प्रस्तुत हैं।

संलग्न :- फर्द की फोटो प्रतियां।

भवदीय,
एस.डी.
जिला आबकारी अधिकारी,
बीकानेर"

The letter by itself does not refer to the inspection of retail IMFL/bear outlet of previous licensee who was also holding wholesale licence for IMFL and beer nor does it state that there was no stock left with previous licensee under retail vend of IMFL and beer.

ZB. While appellants state that before passing of order on 30.5.2001 on 15.5.2001, the contractor has made an application for compounding the offence, which amounts to admission of guilt, the contractor denies to have sent any such application of compounding. The fact that said application purported to have been made by Manoj Ali was received by the Dist. Excise Officer on fact, but was not followed with any confirmation is not in dispute. When the contractor was confronted with said fax message, the contractor had denied to have made any such application.

From the aforesaid narration, it is clear that whole burden of contractor's defence and the contentious issue that arose in the case was whether the IMFL/bear recovered and seized in disputed premises was part of supplies made to previous licensee, whether the disputed premises were part of the approved place of business of previous licensee and whether possession of the disputed premises ever came into hands of the contractor. The irony is that impugned orders by Commissioner dtd.30.5.2005 and consequential order relating to cancellation of country liquor licence dtd.28.6.2005 are conspicuously silent about these aspects.

In the circumstances, when the matter is to be decided on merits, we consider it relevant to assimilate also facts about the previous licensee which are relevant for the present purpose and gathered from records produced by the appellant during the course of hearing.

It is apparent to notice here that during the course of hearing of these appeals, the learned counsel for the appellant had candidly stated that it is not possible to

dispute and deny the fact that IMFL/bear seized from the disputed premises was part of supplies made by the authorised distributory agency to previous licensee M/s Rampal Rajkishan and party, licensee for 2004-2005.

FACTS ABOUT PREVIOUS LICENSEE

M/s Rampal Rajkishan was granted wholesale licence to vend IMFLand beer for financial year 2004-2005 and the licence was issued on 30.4.2004. He was also licensee for retail vend of IMFL and beer for same period as well as licensee for country liquor. All these licences related to Bikaner Group of shops.

In the first instance, the said licensee got approved plan for wholesale godown of IMFL and beer near Tulsi Circle, Model Market, Bikaner which was approved. The plan approved for wholesale godown of M/s Rampal Rajkishan and party from 1.4.2004 to 31.3.2005 is exact replica of plans of proposed wholesale godown for IMFL submitted for approval by the contractor for 2005-2006 on 30.3.2005 before end of period of licence issued in favour of M/s Rampal Rajkishan and party. A comparison of the plan annexed to this judgment as Schedule-B and the plan

submitted by the respondent – contractor in these appeals annexed herewith as Schedule-B falsifies this conclusion. Said Rampal Rajkishan also submitted plan for retail vend of IMFL and beer whose owner was also Sh. Daljeet Singh and Sh. Gurmeet Singh. The said map is annexed herewith as SCHEDULE-C. The map was approved as retail godown from 17.6.2004 to 31.3.2005.

The comparison of approved wholesale godown near Tulsi Circle from 1.3.2004 to 31.3.2005 and the approved godwn for IMFL and beer retail shop from 17.6.2004 to 31.3.2005 establishes two things clearly that the plan approved was part of IMFL and beer wholesale godown sanctioned in favour of said M/s Rampal Rajkishan and party for wholesale trade, but out of said plan, one hall or room was later on sanctioned as retail godown for IMFL and beer vend. Secondly, the situation of IMFL and beer retail godown clearly goes to show that it was a room at the back of IMFL and beer wholesale godown at Tulsi Circle for 2004-2005. It goes to show that this room or hall was open on three sides towards North, West and South and towards east, it was sharing common wall with IMFL and beer wholesale godown. Notwithstanding that measurement described in Schedule -C is referable to

room between hall admeasuring 20 ft. x 40 ft. and 13 ft. x 17 ft, but the situational description in Schedule -C clearly goes to show that the approved plan does not refer to room measuring 27ft. X 17 ft. in frame which in Schedule -C fits in towards eastern side of the approved retail godown. From the perusal of AC and AD, it is also clear that the hall at the back of the map of Schedule-A was open on three sides and independent opening towards open land between way and hall and on the forth side it shares wall with wholesale IMFL and beer godown. In other words there has been alteration in the approved wholesale godown for M/s Rampal Rajkishan and party for the year 2004-2005 situated at Tulsi Circle w.e.f. 17.6.2004 to 31.3.2005.

From the comparison of three site plans Schedule – A, B and C, they leave no room of doubt that IMFL and beer bottles without hologram and MRP was recovered from that pat of the plan submitted by the respondent contractor for approval which was formerly approved as retail godown of IMFL and beer for the period from 17.6.2004 to 31.3.205.

On 28.3.2005, the Commissioner, Excise, Udaipur was informed by the Dist. Excise Officer, Bikaner vide his lette dtd.28.3.2005 that as per the Excise Inspector, Bikner (City) reprot No.797 dtd.28.3.2005, stock of IMFL and beer under the wholesale licence for 2004-2005 is nil. Apparently, this report could only refer to existing wholesale godown of licensee for the year 2004-2005 as it stood modified from 17.6.2004 to 31.3.2005. In fact, as on the date, the Excise Inspector, Bikaner is reported to have inspected the wholesale IMFL and beer godown, the premises from which the stock of IMFL and beer have been recovered without hologram and MRP though was part of the plan submitted by the respondent – contractor as his intended wholesale godown for IMFL and beer wholesale licence but was formerly part of retail godown of IMFL and beer of previous contractor.

The aforesaid letter dtd.28.3.2005 was with reference to letter received from the Commissioner dtd.25.3.2005. The letter dtd.25.3.2005 which finds place in the file, which is not numbered, but is captioned as wholedown IMFL and beer Manoj Ali and party – 2005-2006. This letter shows that the Commissioner has directed the Dist. Excise Officer in whole of the State

calling upon them to submit stocks remaining in wholesale godown of IMFL and beer throughout the state as on 28.3.2005 by 2 p.m. and the same may also be informed to the Chairman and Managing Director, Rajasthan State Bewerage Corporation Limited, Jaipur by fax. The District Excise Officers were further directed to contact through special messenger the Additional Commissioner, Excise, Jaipur, collect hologram and to affix them on the remaining stock on 28.3.2006.

This letter was issued even prior to sanction of contract in favour of Manojali and Party. This letter has not been produced by the respondents along with the reply, though this has been referred to in the report dtd.28.3.2005, but it clearly reveals that in terms of new Excise Policy also referred to above, the Department was to take appropriate action that all stock lying in the wholesale godown anywhere in Rajasthan is affixed with hologram and wherever necessary by MRP labels. This was obligation of the Excise Department and not of the concerned licensee.

Moreover, while this letter forms part of the file concerned with the wholesale godown sanctioned for

licensee for the year 2005-2006, when affixation of the hologram etc. on the balance stock was to be done by the Excise Department of the remaining stock for financial year 2004-2005 before commencement of new licensce for financial year 2005-2006. No file came into existence until 28.3.2005 in the name of Manoj Ali nor the letter dtd.25.3.2005 had any connection with the licenses yet to be issued. Significantly the report dtd.28.3.2005 and the later report alleged to have been made on 31.3.2005 of inspecting the wholesale IMFL and beer godown and retail godown at Tulsi Circle, Bikaner also find place in the file relating to Manojali at the very beginning though they ought to have formed part of Rampal Rajkishan file. This only shows that files have been prepared subsequently and files have no been kept in chronology as and when events have occurred. In face, one of the files delivered to the Court during the course of hearing commences with the letter dtd.25.3.2005 and follows with letter dtd.28.3.2005 and alleged report dtd.31.3.2005 stated to have been forwarded on 1.4.2005 and followed with sanction made in favour of Manoj Ali requiring him to submit map of wholesale trading.

Be that as it may, the facts about M/s Rampal Rajkishan noticed above show that on 28.3.2005 the stock in his wholesale godown as was then existing was found to be nil which did not include the premises in dispute where from IMFL and beer bottles without hologram and MRP was recovered and were seized on 12.4.2005.

Another fact about Rampal Rajkishan which now is no more in dispute, but which was not considered by the Commissioner at any time nor to which reference was made in the reply that the stock recovered from the premise in question was part of the stock issued to M/s Rampal Rajkishan i.e. to say prior to 31.3.2005 when marking on bottles with hologram and MRP was not essential. In other words, IMFL and beers have been issued initially properly to the previous licensee and this remained to be surrendered even after expiry of his licence by the previous licensee.

From comparison of the approved site plans in favour of Rampal Rajkishan and the respondent contractor who has submitted his site plans prior to 31.3.2005 also establishes it clearly that the present contractor has submitted exact replica of the wholesale godown which

was initially approved by the Department for entire finance year 2004-2005, but part of which later on was licensed for retail godown from 17.6.2004 and articles in question were recovered from that part of the godown which was previously licensed for retail godown.

The position in respect of previous licensee clearly established is that he was wholesale as well as retail licensee for IMFL and beer and had separate godowns for retail licence and wholesale licence which was situated conjointly in the same premises, retail godown having separate outlet situated in a room which was open on three sides and that previous licensee had not accounted for IMFL and beer issued to him under his wholesale licence, but as stated by the present contractor as his defence, to have been transferred to his retail shop. Therefore, it did not form part of his wholesale stock at the close of his licence, but remained with him under his retail licence, if the report dtd.28.3.2005 about inspection of wholesale godown of licences for 2004-2005 in pursuance of letter dtd.25.3.2005 is accepted to be correct.

In this connection, it becomes relevant to notice second term of retail licence issued in favour of Rampal

Rajkishan in paper-book submitted by the learned counsel for the Department. Copy of the licence issued in favour of M/s Rampal Rajkishan on 30.4.2004 shows that it was joint licence for wholesale trade. Clause 22 of the licence makes it abundantly clear that **at the close of the licence** whether on expiry of the period or for any other reason, **the licensee was required to inform about the balance stock to the Excise Inspector of the area and deposit entire record in the office of Excise Inspector**. It is not even the department's case tht previous licnesee informed the inspector about the stock in question which was admittedly issued to him during the currency of licence 2004-2005.

Apparently, disposal of the stock or collection of stock was not immediate requirement, but it was required to be stocked at the place from where trade was being carried on for which rent and other charges were to be borne by the licensee whose licence has come to an end. The balance stock was required to be disposed of in accordance with the procedure set up by the Department or may be transferred to the new licensee. However, if any amount is recovered as a result of disposal of stock which may include duty levied on stock, the same was

required to be refunded to the previous licensee for apparent reason that since stock ultimately remained with him. However, this chronology makes it abundantly clear that until balance of the stock remained with the previous licensee is disposed off by the Department, it continues to be stored in the same place where the trade was being carried. Clause 22 reads as under:

> "22. अनुज्ञापत्र की अवधि समाप्त होने अथवा किसी अन्य कारण रो अनुज्ञापत्र रद.द होने की स्थिति में अनुज्ञाधारी को विदेशी मदिरा एवं बीयर के बचे हुए स्टाक एवं समस्त रिकार्ड की सूचना अविलम्ब अपने क्षेत्र के आबकारी निरीक्षक को देनी होगी। समस्त रिकार्ड उसे आबकारी निरीक्षक के कार्यालय में अविलम्ब जमा कराना होगा। निस्तारण होने तक बचा हुआ स्टॉक,आबकारी निरीक्षक एवं निवर्तमान अनुज्ञापत्र धारी के संयुक्त अभिरक्षण में ऐसे स्थान पर रहेगा, जहां व्यवसाय किया जा रहा था एवं निस्तारण करने तक उस स्थान का किराया बिजली व्यय एवं अन्य अधिभार निवर्तमान अनुज्ञाधारी को ही देने होगें। अवशेष स्टॉक विभाग द्वारा निर्धारित प्रक्रिया से ही निस्तारित अथवा नये अनुज्ञाधारी को हस्तान्तरित किया जा सकेगा किन्तु स्टॉक पर चुकाई गई किसी प्रकार की फीस आदि पर निवर्तमान अनुज्ञाधारी को वापस पाने का हक नहीं होगा। निस्तारण से प्राप्त हुई माल की कीमत

एवं माल में निहित डयूटी पर निवर्तमान अनुज्ञाधारी का हक होगा।"

Like condition is included in exactly same manner in the prescribed form of licence for retail sale of IMFL as clause 7.3.

From the aforesaid narration of chronological events and from the position about the previous licensee it is apparent that on 11.4.2005 when the search was conducted by the Dy. Superintendent, Central Excise in the premises map of which was submitted by the contractor for financial year 2005-2006 for wholesale vend of IMFL and beer, large quantity of IMFL and beer was found in the room closed by shutter and lock which was sanctioned for retail vend of IMFL and beer for the previous licensee for 2004-2005, which was originally part of wholesale godown of previous licensee for IMFL and beer. The breach which was found against the present contractor was that the liquor recovered from the aforesaid room did not contain hologram and MRP. The IMFL/beer was found to be unauthorised liquor only for that reason. On finding this, on 13.4.2005, criminal case was registered against the present contractor.

So far as IMFL is concenred, the show cause notice against the present contractor was founded on two grounds that in the premises for which he has submitted plan for approval and subsequently which was approved also as godown for wholesale trade of IMFL and beer, IMFL and beer without hologram and MRP labels were found. On that premise, he was presumed to be in possession of illicit liquor in breach of condition of licence and secondly since criminal case against him is registered under Section 19/54 read with Section 58(c) of the Excise Actin respect of the same breaches, his licence for IMFL and beer for wholesle vend is liable to be cancelled. The defence of the contractor from the very initial stage was the seized stock does not belong to current licensee, but was the balance stock of previous licensee and premises in question were in possession of previous licensee and possession of which was not delivered to him, notwithstanding that he had submitted plan for approval of his wholesale godown for IMFLand beer vend included the said premises. He has stated in his letter dtd.13.4.2005 that though he has submitted plan for approval on understanding that he will got vacant possession of the entire premises on 1.4.2005, but the same did not happen and part in which stock of the

previous licensee was lying continued to remain in possession of the previous licensee. Since he did not receive vacant possesin of that part of the premises from which IMFL and beer bottled without hologram and MRP tag were recovered, he cannot be said to be found in possession of unauthorised liquor. Consequently, his prosecution is also not well founded.

In this connection, it has also been contended that since the parent statute provides for consequence of breach of term of licence, no other consequence could be provided by the delegate as that authority has not been granted to the delegate. He has been delegated power to impose additional condition for grant of licence breach of which may result in consequence provided in the statute, but he cannot provide consequence different than what has been provided for breach of terms of licence. Since mere lodging of criminal complaint is not visited with consequence of cancellation/suspension of licence in the parent statute, lodging of complaint by itself cannot be considered to be breach of condition of licence, therefore, cancellation cannot follow merely on the filing of criminal complaint against the licensee. After the case was registered against the contractor on 13.4.2005 in the first

instance under Section 16/54 of the Rajasthan Excise Act, simultaneously, the Dist. Excise Officer forwarded the plan submitted by the contractor for approval of his wholesale godown for IMFL and beer. The report of the case registered against the contractor was also forwarded to the Commissioner at Udaipur.

Notwithstanding aforesaid incident of alleged violation of terms of sanction of wholesale licence for IMFL and beer and registration of case, the licence was issued on 27.4.2005 and also approval was accorded to the premises as a wholesale godown as per the map submitted by the contractor on 27.4.2005 and thereafter the first show cause notice dtd. 28.4.2005 was issued to the Contractor by the Commissioner stating that on 11.4.2005 from the wholesale godown of IMFL and beer, IMFL was recovered which did not contain hologram of the Department and also did not contain MRP tags which according to the new policy is essential. For this reason, the liquor was described as illicit liquor and for that reason a case under Section 16/54 has been registered as case No.8/2005. For this act, why his licence be not cancelled. Before that, the contractor's plea that recovered IMFL/beer bottles did not belong to him and the premises from which

recovered was made was not in his possession, but the same related to previous licensee, has come on record soon after the search.

The notice dtd.27.4.2005 was followed with another notice dtd.13.5.2005 in which for same reason, it was alleged that the contractor has stored unauthrisedly in approved godown IMFL and beer without containing hologram and MRP labels for which a case under Section 19/54 of the Excise Act bearing No.8 dtd.13.4.2005 has been registered. This act was stated to be in violation of the terms of the licence issuance of which was issued on 27.4.2005 and it was also stated that because a case has been registered against the contractor, it amounts to violation of term No.14 of the contractor. Reference was made to term No.9.2 and 9.3 of the country liquor licence which was stated to be reason for issuing wholesale IMFL licence in favour of the contractor. The term No.9.2 related to that if licensing officer or his superior officer is satisfied that the licensee is not keeping his shop open and is not running his shop properly or he is directly or indirectly engaged in the evasion of excise duty or other charges under the excise law or any other good or sufficient reason, his licence can be cancelled. The term No.9.3 as

general clause states that during currency of licence if licensee contravenes any provision of Rajasthan Excise Act or NDPS Act or if any case is registered against him under any of the Act referred to in Section 34 or provisions mentioned under Section 34, his licence can be cancelled. For this reason, the contractor was required to show cause that why wholesale licene for IMFL and beer which has been granted to him on the basis of exclusive privilege to trade in country liquor was granted to the contractor for Bikaner group of shops be not cancelled and security amount and licence fee be not forfeited.

Two notices dtd. 27.4.2005 and 13.5.2005 did not pertain to intended cancellation of country liquor licence. Significantly on the same date i.e. on 13.5.2005, the Additional Commissioner, Rajasthan Excise, Bikaner wrote to the Dist. Excise Officer inviting his attention to the fact that vide his application dtd.13.4.2005 submitted by the Contractor along with the affidavit of Naresh Kumar S/O Kishori Lal, Chowkidar of previous licensee stating that said Naresh Kuma was acting as watchman on behalf of the previous licensee on 11.4.2005 and that previous licensee has not given possession of the entire premises to the present contractor. According to the chowkidar, the stock

of the previous licensee was still lying until 11.4.2005 in the said premises whereas by 31.3.2005, the Departmental officials ought to have taken possession of the said stock. The Dist. Excise Officer was required to hold enquiry into the fact that who was the person responsible for vigilance over the godown in question and if any officer is found responsible for it, action may be taken against him. The letter did not question the veracity of deposition made by Naresh Kumar. This letter has not been responded by the Dist. Excise Officer until after decision of Board of Revenue on 6.7.2005.

In response to notice dtd.27.4.2005 and 13.5.2005, the Contractor again submitted his detialed reply. In this reply, apart from other contentions, it was clearly stated that in the FIR No. lodged by the Department no batch number of the brands which were found in the disputed premises have been shown. If those brands are tallied with batch number, it would be found that the recovered liquor was belonging to the previous licensee who has got his retail godown approved at Tulsi Circle and recovered goods was stored in approved retail godown. He also pointed out in his reply as we have noticed above that seized liquor was substantially manufactured of rectified

spirit which was not liable to be transferred to subsequent licensee under the new Excise Policy nor it could be transferred to Rajasthan State Beverage Corporation. The sale of IMFL manufactured of rectified spirit was prohibited for 2005-2006 and was required to be destroyed. In the aforesaid circumstances, the previous licensee has left the place without getting the said stock surrendered and without delivering the possession of the room from which liquor was seized on 11.4.2005. He also pointed out with reference to specific permit number and bill number with date that under the aforesaid permit on 24.3.2005, red scotch were sent by the previous licensee to his retail godown at Tulsi Circle, entry in respect of which has been made in the wholesale register and goods have been recovered from the same place where it has been transferred. In the aforesaid circumstances, it was also submitted that this may have happened because of non inspecting the godown until expiry of term of previous licensee and stock remained lying in the godown approved for previous licensee. This may have been done to benefit the previous licensee because in that even he would have to pay for deficiency.

On receipt of the aforesaid reply, the Additional Commissioner vide order dtd.30.5.2005 cancelled the licence for wholesale vend of IMFL and beer after detailing the submissinos made by the Contractor. The Commissioner reasoned that admittedly, the recovered IMFL and beer has been recovered from Tulsi Circle situated at Cold Storage godown of Sh. Manoj Ali on 11.4.2005 and that aforesaid liquor was not supplied by Rajasthan State Beverage Corporation. It did not contain hologram and MRP tags were also not fixed on the label. The said stock is not registered in the stock register of Manoj Ali, therefore, storage of IMFL and beer was illegal and in breach of wholesale licence for IMFL and beer. The Commissioner also attributed admission on the part of Manoj Ali by stating that he has not denied that unauthorised liquor was recovered from his approved godown and it was not entered in his stock register. With this premise, the Commissioner concluded that the Contractor is liable for any goods found in his approve godown. He also referred to registration of case under Section 19/54 read with Section 58(c) of the Excise Act and referred to Condition No.17 and 19 of the Licence and Clause (c) of Section 34(1) which empowers the Commissioner or authority granting licence to cancel or

suspend the same. With these conclusions, wholesale licence for IMFL and beer was cancelled. The amount deposited as licence fee was forfeited. The directions were also issued to take in possession the stock lying in the approved godown of IMFL and beer.

Significantly no finding in respect of the defence taken by the contractor was discussed or recorded. It appears that no enquiry was conducted relating the defence taken by the Contractor that he did not get possession of the room in which IMFL/beer issued to previous licensee was stored and it was stock of previous licensee. It is obvious that in the order aspect of the matter whether stock of IMFL and beer found in the premises in question was authorisedly issued to the previous licensee and was part of unsold stock of the previous licensee was not even considered because if this part of the contractor's plea is found to be true, it highly probalizes the defence taken by him that part of the premises which we have noticed above was sanctioned retail godown of the previous licensee w.e.f. 17.6.2004, was never delivered to the contractor by the previous licensee.

In response of our specific query during the course of hearing, it was clearly stated by the learned counsel for the Excise Department that now it cannot be disputed that the recovered stock of IMFL and beer was authorisedly issued to the previous licensee and was part of the same issue.

On appeal by the Contractor, the Board of Revenue finding that enquiry into the defence taken by the Contractor has not at all been conducted and considered, held that the impugned order of Commissioner dtd.30.5.2005 cannot be sustianed. After noticing the contention raised by the Contractor and reasons stated by the Commissioner, the Board of Revenue considered that power to suspend and cancel licence on breach of terms and conditions of licence or violation of any provisions of the Act or Rules made thereunder is in discretion of the Commissioner. The power is not merely to cancel, but is also to suspend. He also recorded that there is also enabling provisions for compounding offence, the Commissioner has not at all considered as to what appropriate consequences in the case may follow if may alternative. According to the Board, in view of seriously adverse outcome that may follow, summary procedure

adopted by the Commissioner for taking extreme step of cancelling the licence without considering other option was not justified. The Board of Revenue considered the various contentions noticed by us above and came to the conclusion that if the investigation would have revealed that stock recovered from the disputed premises was not the one issued to the previous licensee, then the allegation against the current contractor for storing illicit IMFL and beer would have been proved. It was also stated that mere lodging of complaint does not prove truthfulness of the allegations and therefore, it is not justified to cancel the licence on mere registration of the case. It was also fond that if on enquiry, it was to be found that stock was part of the supply made to the previous licensee and in his stock register, the same have been entered, then it is reasonable to infer that due to negligence of the officers of the Excise Department and malafide intention of the previous licensee to avoid payment of excise duty, goods were kept at the disputed premises for some ulterior motive. The Board of Revenue also referred to the affidavit of Naresh Kumar. The fact that no enquiry was directed towards previous licensee's stock register, permit register or issue register and whether the current licensee was given possession of the entire premises or not, the

finding of guilt against the current licensee was not justified. It was also pointed out that facts relating to previous licensee were in the knowledge of the Department and burden to prove such facts could not have been placed on the current licensee. All these material could have been placed by the Departmental authorities. Importantly, the Board referred to letter dtd.13.5.2005 written by the Additional Commissioner, Excise to the District Excise Officer intimating the facts about the claim of the contractor that the stock belonged to the previous licensee and hold enquiry and inform him about the outcome and found that no response to said letter was available on record. The Board of Revenue also questioned the extraordinary step taken by the Department for issuing licence and approval of godown after the incident dtd.11.4.2005 had taken place and about which criminal prosecution was also launched and which was consdiered to be so grave to cancel the sanction itself. In substance the Board found that relevant enquiry was not undertaken into the defence of the contractor which depended on finding the fact that whether stock belonged to the previous licences and information about which was withheld. Not making any enquiry about that and merely relying on the submission and approval of site plan of

wholesale godown before commencement of period of licence was not justified. Consequently, the Board remitted the case back to the Commissioner for holding appropriate detailed enquiry into all these aspects and then make a fresh order.

Since cancellation of country liquor licence was primarily founded as consequential to the cancellation of IMFL licence inter alia on the ground of registration of case under Section 19/54 read with Section 58(c) of the Excise Act in connection with the contractor found to be illegally stored IMFL and beer without hologram and MRP which was breach of new policy and Section 34(2) which envisages that if any licence issued under the Act is cancelled on account of breach of terms of licence or the contractor having been found to have been acted in breach of provisions of the Act or the Rules, the other licence of the licensee can also be cancelled. Since cancellation of licence of wholesale vend of IMFL and beer was held to be not justified, cancellation order of country liquor licence dtd.28.6.2005 was also set aside and the matter was remitted back.

As we have noticed above, cross writ petitions were filed against the aforesaid order of remand td.6.7.2005 by the Board. Both Department as well as the Contractor filed separate writ petition in respect of IMFL and country liquor before the learned Single Judge. The learned counsel for both the parties stated that the matter may be decided on the existing material and on that premise, the learned Single Judge examined the material and found that on that basis, the impugned order of cancellation of IMFL as well as country liquor licenses cannot be sustained.

Before us, the learned counsel for the Department Sh. Singhvi has urged that notwithstanding the stock found in the dispute premises was part of stock issued to the previous licensee, the respondent – contractor cannot be absolved from his responsibility. It was contended that since the premises from which the stock of IMFL and beer was recovered was part of the plan submitted by the contractor for approval, notwithstanding that actual approval was accorded later on, it must be deemed that the contractor was authorised to carry on his business in the premises, plan of which was submitted by him for approval and the premises must be deemed to be provisionally approved. Therefore, seizure of large quantity

of IMFL and beer makes the respondent contractor responsible. Therefore, the contractor must be presumed to be in conscious possession of the unauthorised IMFL and beer recovered from the aforesaid premises. He also submitted the fact that whether any action has been taken against the previous licensee or not cannot absolve the current licensee from his own responsibility. It was vehemently urged by the learned counsel for the Department that since it is the admitted position from the defence taken by the respondent on its face value that he knew atleast on 1.4.2005 that he has not received the possession of the premises, plan of which he had submitted for approval and that as per his defence previous licensee has informed him that since his balance stock is lying in that premises, which would be disposed of according to the procedure laid down by the Excise Department shortly, it was within the knowledge of the contractor that the said premises contained stock of the previous licensee, still he did not inform immediately the Dist. Excise Officer about non-delivery of posession of part of the premises to him or about the stock of the previous licensee lying in that part of the premises. He contends that since it was within the knowledge of the contractor that in the disputed premises stock of the previous licensee

was existing, he could not absolve himself from the responsibility of being in possession of that stock since 1.4.2005. The defence taken by the respondent – contractor was stated to be entirely afterthought after the recovery of huge quantity of IMFL and beer which did not bear hologram and MRP and therefore, is worthless o be considered.

Mr. Singhvi strenuously urged that at any rate it cannot be disputed that the case No.8 dtd.13.4.2004 was registered ultimately under Section 19/54 read with Section 58(c) of the Rajasthan Excise Act for illegal possession of unauthorised excisable article by the contractor in terms of Condition No.17 of the wholesale licence for IMFL and beer and under the corresponding condition in the country liquor licence, the licence was liable to be cancelled. Since jurisdiction or power to cancel the licence vests in the Commissioner, he has exercised the same on finding that the contractor was found in possession of unauthorised excisable article, he has cancelled the licence. Exercise of such power which are quasi judicial in nature after affording opportunity of hearing to the petitioner cannot be interfered with in exercise of extraordinary ordinary jurisdiction by seeking

writ of certiorari, the finding recorded by the Commissioner are findings of facts based on undisputed facts, the same are not liable to be interfered with. It was urged that the Board of Revenue ought not to have interfered with the findings because according to the learned counsel enquiry into question of issuance of stock in question to the previous licencee which has not been surrendered to the Department at the close of his licence period are irrelevant so far as current contractor is concerned. He also relied on report of the Excise Inspector dtd.28.3.2005 in relation to wholesale vend and in relation to retail vend, the report dtd.31.3.2005 to urge that on inspection, previous licensee's stock was found to be nil before expiry of period of licence and therefore, presumption about the regularity and correctness of the enquiry conducted in respect of exercise of official duty in the ordinary course of business is attached with those reports which have not been rebutted. Consequently, the subsequent recovery of large quantity of IMFL and beer from the premises sought to be approved for wholesale business of the contractor provides material to sustain the findings of the Commissioner about the unauthorised possession of illicit liquor by the current contractor.

The learned counsel for the contractor has supported the finding reached by the learned Single Judge and has contended that on existing material, atleast three authorities have unequivocally reached the same conclusion that orders for cancellation of licences on the basis of existing material is not sustainable, but need further enquiry, therefore, it must be deemed that on the existing material, cancellation of licence vide order dtd.30.5.2005 and 28.6.2005 respectively relating to IMFL and beer and country liquor are liable to be set aside and quashed. Apart from this general submission, it was pointed out by the learned counsel for the Contractor that apart from the breach of principle of natural justice, at every stage, as noticed by the Board of Revenue in not directing any enquiry towards the defence taken by the contractor that the new policy which was announced in February, 2005 required the officials of the Department to put hologram and see that MRP is tagged on each bottle which remained in the stock at the close of the current year , hence, breach in that regard, if any could be on the part of the issuing authority or the departmental authorities who were obligated to put hologram and MRP labels on balance of stock issued during 2004-05. Therefore, when the stock in question was issued to the

previous licensee that stock was not surrendered by the previous licensee and was recovered from the same premises which was approved retail godown of the previous licensee, it was a case of failure on the part of the Excise Department to take in its possession the stock in balance at the close of the financial year, 2004-2005 and dispose it off in accordance with the departmental procedure by placing hologram and fix MRP tags on the bottles which could be sold in the market either by transfer to the subsequent licensee or to the Rajasthan State Beverage Corporation for re-issue or destroy that part of the liquor which was prohibited to be sold to the consumer in terms of new policy. Failure on the part of the previous licensee in not surrendering the balance stock to the Department at the end of his licence period, the new contractor cannot be held liable. He pointed out that once it is not in dispute that the recovered stock was part of the stock issued to the previous licensee, it makes the defence taken by the present contractor strongly substantiated. It was also urged that as per condition No.17 on which great emphasis has been laid by the learned Counsel for the Department that on mere registration of case licence can be cancelled is not a valid argument. Registration of criminal case under the Act cannot be considered to be

thing which was within the domain of the contractor. The case is to be registered at the instance of Excise Department. Mere registration of case, therefore, cannot result in automatic cancellation of licence as has been argued by the learned counsel for the Department and it is one of the grounds on the basis of which two licences have been cancelled. Our attention was invited to Section 34(1)(d) of the Act. There being no provision for cancellation or suspension of licence on mere registration of case, the power under Section 34 to cancel the licence cannot be invoked. Therefore, cancellation of licence on mere registration of the case cannot be sustained. A delegate cannot confer upon power to inflict consequences, which are not provided in the parent act nor any authority to provide consequences different from one provided under the Act for breach of terms of licence has been conferred by the parent Act.

Controverting the two alleged reports by the Excise Inspector, it was urged that so far as report dtd.28.3.2005 is concerned it is referable to inspection of wholesale godown of previous contractor. The wholesale godown of previous contractor did not include premises in question from which stock in question has been recovered .

Therefore, the report dtd.28.3.2005 has hardly any relevance to discard the defence taken by the contractor. So far as subsequent report alleged to have been prepared on 31.3.2005 at about 11 p.m. is concerned, it was urged that this report has not seen light of the day until after the decision of the Board of Revenue when the Board of Revenue has remarked that notwithstanding enquiry directed by the Additional Commissioner about not inspecting the godown before expiry of term of previous licensee vide his letter dtd.13.5.2005, the Dist. Excise Officer did not respond until his letter dtd.14.7.2005, a week after the order of Board of Revenue dtd.6.7.2005 stating about the report dtd.31.3.2005. It was pointed out that even in this letter replying to the letter dtd.13.5.2005 of the Additional Commissioner, the Dist. Excise Officer merely stated that before close of the licence period, there was nil balance under the wholesale IMFL licence and same position is clear from the register relating to wholesale IMFL business. No balance was left in the wholesale godown. About the status of Naresh Kumar Chaudhary of previously licensee, the Dist. Excise Officer rest contented by saying that his approval as employee of previous licensee came to an end on 31.3.2005 automatically. Significantly this letter does not state that

there was nil stock in the retail godown for IMFL and beer. It was pointed that in the report also, reference has not been made to retail godown of IMFL and beer. It merely states Retail godown, Tulsi Circle, Bikaner. It was pointed out by the learned counsel that the country liquor shop is also situated at Tulsi Circle, licence of which was also with the same licensee for the year 2004-2005. Conspicuous absence in the report about nil balance in the retail godown of IMFL and beer supports the case of the contractor rather than of the Department about stock position, the alleged report dtd. 31.3.2005 does not cut the ice. It is apart from the fact that this report appears to have been made later on to fill in the lacuna.

We have considered rival submissions and perused the material placed before us including the original records during the course of hearing.

The key issue required to be considered is whether the stock found in the disputed premises belonged to the previous licensee and whether possession of the said premises came to the current contractor or 11.4.2005 or not.

Since now it is no more in dispute that the stock recovered from the disputed premises was issued to the previous licensee before 31.3.2005, it follows that it was the balance stock that remained in the hands of previous licensee and which has not been surrendered or accounted for to the Department by the previous licensee.

Nothing has been stated by the appellants at any stage whether the records of previous licensee was surrendered to authority at the expiry of peirod of licences and whether stock position tallied with the register. It is the basic requirement under the licence that at the close of licence the licensee shall surrender all registers required to be maintained and the Excise Authorities are required to verify the correctness of stocks as per register with physical verification. In the absence of such verification with record, the conclusion cannot be drawn that at the close of licence the licensee has disposed off all the supplies made to it and nothing remained in stock. This is firmly established from the facts of the case that while inspector purports to have reported stock supplied to previous licensee to be nil, yet huge quantity of IMFL/beer bottles supplied to previous licensee remained undisposed off and found to be lying in the very same premises where

they ought to have been at the close of licence until its disposal by the Excise authorities in accordance with law. Until verification of balance stock with register is made, no presumption of correctness of reports submitted by the inspectors in the circumstances of the present case can be drawn. Reference in this connection can be made to clause 22 of license issued to previous licensee which supports the above conclusion.

We have already noticed above that as per the terms of previous licensee both under the wholesale as well as retail IMFL and beer, it was required by him to surrender all the registers etc. under both the licences required to be kept by him to the concerned Excise Officer at the close of its financial period. However, the balance stock was required to be continued to be stored in the approved premises of previous licensee so that the same can be disposed off in accordance with the procedure laid down by the Excise Department for its disposal which also envisages the transfer of balance stock to the new licensee if the concerned authority so desires and it also envisages that if as a result of transfer of stock, any amount is recovered, while the licence fee is not refundable to the previous licensee, but he becomes entitles to refund of excise duty

paid thereon. This suggests that the time being even after the expiry of licence period, the balance stock of the previous licensee continues to remain in the premises approved for his business when it is actually removed by the Excise authorities as per the disposal procedure.

Three site plans attached with this order as Schedule – A, B and C in their comparative study clearly goes to show that premises from which IMFL and beer in question was recovered was initially part of approved godown for wholesale licence of IMFL and beer of previous licensee until 16.6.2004 and from 17.6.2004, the said premises were approved for retail godown. In these circumstances, the fact that stock found on 11.4.2005 was part of the stock released to previous licensee when there was no requirement of placing hologram and MRP on the bottles and it was recovered from the same premises which was approved retail godown for previous licensee coupled with the fact that previous licensee was not required to deliver possession of the entire stock immediately on expiry of licence, but he was only required to submit the record required to be kept by him including the stock register immediately on expiry of licence period, but th balance stock was to be dealt with in accordance with the

procedure laid down by the Department after due verification of the stock, which obviously meant accounting the tallying with the stock register. To remind, search took place at 12.30 a.m. on 11.4.2004 as per the Fard prepared in pursuance of tht search, but Fard was prepared and signed at 11.30 p.m. on 12.4.2004 which is apparent from the fact that no details about the continued activities for more than 36 hours finds place in the report, but it justifies that balance stock being so large in quantity, it was not possible to have verified, taken possession of and dealt with immediately. The report dtd.31.3.2005 referred to by the Excise Department to suggest that on inspection stock under the retail licence was found to be nil does not appear to be correct and the report appears to have been prepared later on. There is reason for this conclusion. In the concluding note in reply to the letter dtd.13.5.2005 by the Dist. Excise Officer after culmination of the proceedings before the Board of Revenue, he does not report notwithstanding two reports submitted by the Excise Inspector that the balance under the retail licence of IMFL and beer was found to be nil. In the report dtd.31.3.2005 also, the Inspector does not refer to retail licence of IMFL and beer. Even from the admitted position, it was not possible to have removed such a large quantity of liquor

from the place of its search until 31.3.2005 and then to bring it back to the same place. In ordinary course of human behaviour also, it would not have been conduct of removing and bringing it back because continued storing in the same premises of balance stock was otherwise justified under the terms of licence of previous licensee.

While the wholesale stock register were brought before the Court for perusal to suggest that stock as per the wholesale stock register was nil as on 28.3.2005, but no such attempt was even made in respect of retail licence. The records about the retail licence were not referred to us nor it was asserted that the retail stock register and other record of retail licence was delivered to the Excise Department by the previous licensee or is in their possession and the stock position was verified. In fact, that cannot be in view of admitted position that stock of IMFL/beer seized on 12.4.2005 was part of supplies made to previous licensee authorisedly.

The report of the search party is conspicuously silent about the fact that substantial part of IMFL seized on 11.4.205/12.4.2005 is manufactured out of rectified spirit which was prohibited to be sold in the market under the

new Excise Policy, 2005-2006. Notwithstanding this fact was brought to the notice by the Contractor in his defence, the Commissioner also did not take notice of this fact. Obviously this fact explains the conduct of the previous licensee. On wholesale licence credit is taken on excise duty paid on supplies received by him when the same is remained to retail vend and excise duty becomes payable by the retail vender as and when it disposed it off. However, on the balance stock, at the end of the licence, he becomes liable to pay excise duty on such balance stock. Since stock was not transferable to new contractor as per the new policy and no recovery of that amount was possible and liability to pay excise duty was to fall on the previous licensee and unless the stock left with previous licensee are surrendered and accounted for in terms of the licence, they continued to remain in the same premises, where the licensee was authorised to conduct his business. This fact corroborate the stand taken by the current contractor that IMFL/beer bottles recovered from the disputed premises were part of the supplied made to previous licensee who has left the place without surrendering the stock and same remained stored in the the premises wherefrom he was authorised to conduct his trade. The possession of such premises never came to the

new contractor. It is true that reference to conditions of previous licence has not been made by the current contractor, but the fact remains that the matter was never investigated by the Commissioner. Had he investigated and found that stock were of the previous licensee which was not accounted for by him and was recovered from the place wherefrom the previous licensee was authorised to conduct his business, conclusion was not far after considering the terms of previous licence that those stock were required to be continuously kept at the same place where from the previous licensee was authorised to conduct his business and if that were so, the delivery of vacant possession of said premises would be physically impossible.

In these circumstances, apart from any other contention, we are satisfies that on the existing material and from the record made available to us, it is reasonable to infer that current contractor for the year 2005-2006 did not receive vacant possession of the premises in question and since stock recovered from the premises was authorisedly issued to the previous licensee, but has not been surrendered the same to the Excise Department on expiry of term of his licence, the respondent contractor

could not be said to have come in conscious possession of the liquor recovered from the disputed premises.

Subsequent approval of the proposed premises for conduct of wholesale business would not alter the factual position and at best it can be said that after 12.4.2005, when the Department has taken possession of the stock found in the disputed premises, it became vacant and thereafter the current contractor could conduct his business from that premise also. Merely on the basis of submission of proposal on 30.3.2005 wherefrom the licensee for the year 2005-2006 intended to conduct his wholesale vend of IMFL and beer would not lead to further presumption that he did get on 1st april the actual vacant possession of said premises. When the aforesaid facts and circumstances clearly goes against the said presumption. In other words, it can be said that presumption if any stood rebutted from the material on record. We are constrained to observe that nowithstanding clear defence taken and noticed by the Commissioner, it was apparently erroneous for him to say that it is undisputed that seized liquor was recovered from cold storage godown situated at Tulsi Circle belonging to Manoj Ali when the very basic defence raised before him was that unauthorised excisable

articles was recovered from the place possession of which was not delivered to Manoj Ali and it did not form part of the lease until then.

So far as the fact that it was not issued by the Rajasthan State Beverage Limited and was not containing hologram and tags of MRG are not the facts in dispute nor it is in dispute that it was not entered in the stock register of Manoj Ali. The fact that these facts were not disputed by Manoj Ali does not lead to further inference as has been drawn by the Commissioner that the premises was part of sanctioned godown on 11.4.2005. The factual position as on 11.4.2005 was apparently that the disputed premises was part of the premises which was sanctioned as retail godown of the previous licensee where from Manoj Ali intended to conduct his wholesale licence in IMFL and bear. The sanction was not granted until 27.4.2005. During this period, Manoj Ali has disputed that he was not given vacant possession of the premises in question by the previous licensee on the ground that he has still to surrender the account for stock lying in balance with him in the said premises. Therefore, without enquiry and giving finding on this aspect, it could not have been presumed that as on 11.4.2005, the disputed premises was part of

his approved godown. Once, this presumption is taken out and fact of stock found in the disputed premises as part of stock to the previous licensee is accepted, the defence taken by the respondent – contractor stands substantiated unless the Department could prove otherwise that the goods were actually removed from the premises before 31.3.2005 and stock at the site was actually nil which is against all probable course as we have noticed above.

Once this finding is accepted, emphatic plea of the learned counsel for the Department that because case has been registered under Section 19/54 of the Excise Act, the contract was liable to be cancelled in terms of condition No.17 of the licence also falls to the ground. Acceptance of fact of stock being part of supplies made to the previous licensee and is being found in the same premises wherefrom he was authorised to conduct his trade under licence makes allegation against the present contractor groundless.

Moreover Clause 17 of the licence is not a term of the licence which could be breached by the licensee. So also, the delegate authority cannot provide legal consequence of breach of terms of licence different from

what has been provided under the Parent Act unless such power is delegated to the Commissioner. No such, power is shown to have been delegated under the Act to the Licensing Authority to confer upon itself to provide consequence for breach of condition of licence other than what has been provided under the parent Act. It would be also termed as cancellation of the licence at will of the licensing authority. Mere registration of case cannot result in automatic cancellation of licence as appears to have been assumed by the Commissioner while cancelling the licence issued in favour of the Contractor.

In this connection, we may refer to the affidavit of Naresh Kumar whose status as Chowkidar of the previous licensee has not bene shown to be incorrect. He was neither submitted to cross- examination nor other material was brought on record to show that his submission in the affidavit that disputed premises was part of the licensed premises of the previous licensee and in it was lying the balance stock of the previous licensee was lying therein even after expiry of period of licence was wrong. The effect of this material which was with the Commissioner at the time of deciding the matter has not been at all considered.

Ignoring such a vital material certainly amounted to breach of principle of natural justice.

From our conclusion above, the assertion in the affidavit appears to be correct. Moreover, after decision of Board of Revenue, two affidavits from the previous licensee have been submitted before the Commissioner, Excise, Udaipur. Thee are of Raj Kishan and Rajesh Kumar. Raj Kishore was partner of the previous licensee and Rajesh Kumar was stated to be employee of Rampal Rajkishan and party during the year 2004-2005 in connection with country liquor and IMFL licence granted to said party. Both the deponents have owned that balance stock of country liquor and IMFL was not surrendered to the Department on 31.3.2005 and was left under the watchmanship of Naresh Kumar. In the affidavits it was also stated that the excise duty on the same has been paid and whatever amount in respect of said IMFL/beer is due, he is prepared to pay. These affidavits have been sent to the Excise Commissioner directly under forwarding letter dtd.12.7.2005. The receipt of these affidavits have not been denied by the Department. However, it has been stated that since these documents have been submitted after dismissal of the case by the Board of Revenue, they

are afterthought and does not help them. However, the Excise Department has not taken note of these contentions and has not made any submission in respect thereof. They have simply ignored this aspect of the matter. But since the fact that it is part of IMFL and bear supplied to the previous licensee is admitted and no more in dispute, further consequence can easily be foreseen that the the disputed premises where it was stored and was recovered from the same place was the authorised premises for trade by the previous licensee where his balance stock was continued to be stored until disposal by the Department. This fortifies that conclusion to which we have reached above on the merit of the contention.

The Commissioner in his order has stated two things. Firstly that in the absence of any representative of licensee, it was not possible to verify the stock position with the stock register. Secondly, the IMFL/beer recovered from disputed premises was not entered in the stock register of the licensee.

Both arguments cut across each other. When there was no verification with stock register, the Commissioner

could not have reached the conclusion that the seized stock was not entered in the stock register.

Secondly,when the seized stock had been issued to previous licensee and it is no body's case that said previous licensee has surrendered the balance stock alongwith register to the Department for disposal of such stock in accordance with the procedure laid down, to find an entry in the stock register of present licensee of the seized stock which was part of authorised supplies made to previous licensee, which has not been accounted for, was looking beyond horizon. The non-consideration of licensee's plea in this regard, which is found to be true, strengthens the apprehension that search party was aware that the stock of previous licensee which has not been accounted for by him, is lying at his place of business and since he was immediately not available, the Department made up its mind to punish current licensee by eshewing facts which were in the knowledge District Excise Authorities and officers of the Department.

As a result of these conclusions, the cancellation of wholesale licence for IMFL and beer for 200-2006 granted in favour of the respondent – contractor cannot be

sustained and deserves to be quashed. The learned Single Judge was therefore, right in reaching the same conclusion and quashing order of Commissioner dtd.30.5.2005 and setting aside the order of Board of Revenue to the extent it remitted the case back to the Commissioner.

So far as cancellation of country liquor licence is concerned, it suffers from patent infirmity as no show cause notice was issued for cancelling country liquor licence until IMFL licence was cancelled on 30.5.2005. As a matter of fact, the record of the proceedings show that while cancelling wholesale licence for IMFL and beer, the Commissioner required the contractor to show cause as to why on account of cancellation of wholesale licence for IMFL and bear, country liquor licence be also not cancelled. He also referred that because a case under Section 19/54 has been registered against the licensee in respect of unauthorised possession of large quantity of IMFL /bear which is in violation of terms of conditions of licence, his licence be not cancelled.

The counsel wanted time to file reply thereafter.

The contention of the learned counsel for the appellant that in the notices dtd.13.5.2005 and 27.4.2005, no reference has been made to the country liquor licence. Therefore, notices dtd.27.4.2005 and 13.5.2005 cannot be considered as show cause notice required to be given before cancellation of country liquor licence. The Commissioner has erroneously referred to show cause notice dtd.13.5.2005 as giving opportunity to the contractor for explaining as to why his country liquor licence should not be cancelled. The first reason which was given by the Commissioner by considering the provisions of Sub-Section (2) of Section 34 of the Act of 1950 that since the wholesale licence for IMFL and bear was cancelled as he was found guilty of keeping large quantity of stock of IMFL and bear in unauthorised manner in his licensed godown, therefore, his licence is liable to be canceled. However, the conclusion that the wholesale licensee was found guilty of keeping large quantity of IMFL and bear with intention to evade excise duty on such stock was neither the finding recorded while cancelling IMFL and bear licence nor any such notice in respect of evasion of excise duty was ever served on the contractor. Apparently, the Commissioner while cancelling the country liquor licence has extended the canvass of its reasoning

beyond the notice given to the contractor. Moreover, as we have noticed above and found that the cancellation of wholesale licence for IMFL and bear was not liable to be cancelled as current contractor's defence taken by him has been substantiated from the material on record. Consequently, cancellation of country liquor licence on the basis of cancellation of wholesale licence for IMFL and beer also cannot be sustained. Accordingly , the learned Single Judge was right in his finding that the order of Commissioner dd.28.6.2005 was also liable to be cancelled and remand order in that respect was not justified.

Time and again reference has been made to Section 58(c) in connection with offence alleged to have been committed by the Contractor and in respect of which complaint has been lodged by the prosecution. A bare perusal of Section 58 goes to show that it relates to minor infringement of the Rules which have not been otherwise provided for and which cannot entail cancellation of licence, but entails with token penalty upto maximum of Rs.500/- only for such breach. Apparently in the case in which penalty under Section 58(c) is invited looking to the minor nature of breaches, the legislature's intent is clear that such a breach cannot result in cancellation. Threfore,

reference to Section 58 indicates that authority resorting to lodging of complaint and making cancellation of licence were clear in mind that breach alleged to have been committed by the Contractor fell within section 58(c) and not under any other specific provision and therefore, it could entail imposition of fine of Rs.500/-. Apparently, cancellation of licence could not have been resorted to in respect of breaches which fell within Section 58 particularly clause (c). It has not been pointed out by the learned counsel for the appellant nor it is clear from the impugned order of which particular provision either of the Act or terms of the licence, the contractor has committed breach. So far as affixing hologram on the balance stock at the close of financial year 2004-2005 remainng with the licensee by 31.3.2004 was obligation of the Department. If that balance remains in the stores without holding, it can be referable to negligence on the part of the authorities of the Department or some surreptitious action on the part of the previous licensee in whose possession, the same was there. Non-fixation of hologram obviously cannot be related to the contractor for the year 2005-2006 in any manner. Similarly, labelling of MRP is the duty of manufacturer which the contractor is not. Reference to Rule 58(c) and consistent reference to recovery of stock

without hologram and market price cannot be of any relevance unless by proper material, link of acquisition of stock of previous licensee by the current licensee is established. There is neither any allegation nor any material that the contractor has acquired the aforesaid disputed IMFL and bear stock from the previous licensee with whom undisputedly the stock remained at the close of his business period which he has not surrendered.

Reference to Section 58(c) further envisages that balance complained of was not of any specific term of licence or infraction of any specified provision of the Act, Rules or contract, hence, at best any consequence that could follow was the levy of penalty not exceeding Rs.500/-. No other consequence for such breach was even in the mind of authorities. Had it been otherwise no reference to Section 58(c) would have at all found place.

We have already noticed above that in terms of licence of the previous licensee, the balance stock of the previous licensee was required to be retained in approved place wherefrom he was permitted to operate, until the stocks are verified and disposed off in accordance with the procedure laid down by the Department. In the first place,

when notwithstanding clear defence taken to this effect, no attempt was made either to establish that stock found in the disputed premises did not belong to previous licensee which could have given rise to a strong presumption against the defence set up by the Contractor or that premises wherefrom it was recovered was not approved premises of the previous licensee. Now the fact that recovered stock of IMFL and bear was authorised supplies made to the previous licensee is not in dispute and it is well established from the record that the disputed premises in question wherefrom the stock of IMFL and bear was recovered during the search conducted on 11 and 12th April was authorised premises for retail godown of the previous licensee w.e.f. 17.6.2004 to 31.3.2005 and the room was carved out from the original approved place of wholesale godown of IMFL and bear. Establishment of these two facts coupled with condition of previous licence strongly supports the conclusion that since the stock was not surrendered by the previous licensee and register and documents about retail licence have also not been surrendered, the stock remained in the approved premises wherefrom the previous licensee was permitted to conduct his business pending disposal of the stock because substantial stock was not saleable under the new Policy of

2005-2006, previously licensee may have lost interest in applying the procedure for surrendering of stock as he was not going to obtain anything out of it, but for that act, the current contractor cannot be blamed. Moreover, the aforesaid circumstances cast serious doubt about the role of Inspector who prepared report dtd.31.3.2005 signed at 11.30 pm. i.e. before mid night without referring to the fact whether he has inspected the retail godown of country liquor or IMFL by simply reporting that stocks were found to be nil and also keeping in view strongly worded letter dtd.17.7.2005 after Board has decided the objections and has taken note of Additional Commissioner's letter dtd.13.5.2005 having gone unresponded nowhere suggest that stock under the retail licence of IMFL/beer were also found to be nil. We have also noticed from the record that Hajja Ram was the person who is alleged to have reported on 31.3.2005. He is the person who is called by the Dy. Excise Superintendent to be present at the time of search on 11.4.2005. He is the person who is appointed motbir and he is the person who during the search instigate about the opening of close room with shutter lock by asserting that unauthorised excisable articles are to be found therein are strongly suggestive of the fact that it was in know of the Inspector that stock of previous licensee stored in the

approved premises was lying therein. The fact that current contractor has submitted the plan of the wholesale premises which was originally submitted by the previous licensee for approval, it is highly probable that he got the contractor unaware about the fact of huge quantity of IMFL and bear lying therein. Apparently, it is not the case of the Department that the previous licensee has ever accounted for balance remained with him. When the recovered stock was part of the excisable articles issued to the previous licensee, until the same has been accounted for by him and were available for acquisition by others there cannot be any presumption against the subsequent contractor. We are of the opinion that in absence of such link evidence having been established that there was conscious transfer of excisable articles in favour of subsequent licensee, he could not have been held liable for the recovery of said articles from the premises which were approved in favour of the previous licensee for conduct of his business.

We have already noticed above that entire premises which were approved as wholesale godown was subsequently modified. The room from which IMFL and bear were seized on 11/12.4.2005 was converted into room w.e.f. 17.6.2004 and it is highly probable that

contractor having taken map of the previous licensee as approved from 1.4.2004 to 31.3.2005 has submtited the proposed licence wherefrom he wanted to conduct his business of wholesale IMFL and bear for succeeding year 2005-2006 without being in know of the fact that subsequent to 1.4.2004 w.e.f. 17.6.2004, a part of the premises were sanctioned for conduct of retail licence by the same contractor vide Schedule -C.

In the background of aforesaid circumstances, another circumstances which gain significance is that according to survey report dtd.12.4.2005 signed at 11.30 p.m. when the search party entered the premises by forcing their way by breaking open the lock from inside of the Gate,they have first searched the wholesale godown which was opened and prepared separate list of it. However, that could only be part of wholesome document prepared on 11.4.2005 and 12.4.2005, but that list of the articles has not come forward sofar. In the report there is neither any assertion that stock found in the open part of the godown were found in the stock register and were found to be in order. In fact, the Commissioner in his order dtd.30.5.2005 has clearly stated that since official or any person on his behalf was present, it was not possible to

verify the stock from the stock register. If it was not possible to verify the stock from the stock register, the articles lying in the closed room, how the stock lying in open warehouse was verified and found to be O.K. Since at the relevant time, the previous licensee had already left Rajasthan and was beyond the reach for taking action against him, the respondent – license was found to be a convenient scapegoat. The absence of detailed list of IMFL and bear lying in the open godown and non-verification thereof and as per the finding of the Commissioner, no possibility of having verification in absence of officials or his agent, had entire premises were searched and verification of entire stock been made, the only possible consequence would have been seizure of entire godown. Action of the search party in searching and seizing only premises in dispute casts serious doubt on the truthfulness of the search report which does not detail continuance of the proceedings from 12.30 p.m. n 11.4.2005 until 11 a.m. on 12.4.2005. The search report is conspicuously silent in explaining almost 36 hours taken in preparing the report. Be that as it may, from the material on record the Excise Department has failed to prove that the respondent – contractor can be legitimately blamed for the stock of previous licensee lying in the sanctioned godown for retail

licence and apparently, which has not been accounted for by him after expiry of his term of licence. Therefore, cancellation of licences also cannot be sustained.

We are in agreement with the learned Single judge that cancellation of licence by the Commissioner vide order dtd.30.5.2006 and 28.6.2005 of wholesale IMFL/bear licence and country liquor licence cannot be sustained and deserves to be quashed. As a result of aforesaid discussions, the order of remand made by the Board of Revenue also cannot be allowed to stand.

Coming to the relief, it is common ground that period of two licences for the year 2005-2006 has already expired and the licences cannot be restored in favour of the contractor, therefore, he cannot be allowed to trade in liquor under said licences. However as cancellation of licence in both the cases have been found to be illegal, consequently, the order of forfeiture of security and licence fee in each case cannot be sustained and they are required to be refunded to the contractor. If the contractor is entitled to interest thereon under the law, he is also entitled to interest on amount of refund of security amount and licence fee for the period, he was not allowed

to carry out the trade under the licence along with interest until the date of actual refund. So far as claim of contractor for lass of profit, which he could have earned had he was allowed to continue with trade in exclusive privilege, is concerned, as we have noticed above the same cannot be granted in this writ petition. The same may be subject matter of separate suit for damages if to such damages he is entitled under the law.

Accordingly, the appeals are dismissed. The judgment of learned Single Judge is affirmed for the reasons stated hereinabove. The writ petition filed by the contractor stands allowed and the writ petition filed by the State and Excise Department are dismissed on merits, as a result of which the orders passed by the learned Board of Revenue dtd.6.7.2005 to the extent it remits the case to the Commissioner and the order passed by the Commissioner on 31.5.2005 cancelling wholesale licence for IMFL and 28.6.2005 cancelling country liquor licence of the respondent contractor stand quashed. The respondent contractor shall be entiled to one set of cost.

(R.P.VYAS)J. (RAJESH BALIA)J.